



July 11, 2013

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket Nos. 13-140, 12-201, 08-65: Ex Parte Communication

Dear Ms. Dortch:

As the record in this proceeding makes clear, the Independent Telephone & Telecommunications Alliance (“ITTA”) and numerous commenters representing a variety of industry segments agree with the Commission's determination that its “regulatory fee methodology has not kept pace with the changes in both the communications industry and within the Commission.”¹ ITTA members and other wireline carriers have been over-assessed regulatory fees for more than a decade, and wireline companies continue to bear the most significant burden in regulatory fees among industry sectors, even though they no longer require the same expenditure of Commission resources as they did when the current fee calculation rules were last revised fifteen years ago. Since at least 1998, wireline carriers – and their customers – have been bearing a disproportionate share of regulatory fees. This disparity has only continued to increase as the communications industry has evolved over time.

Virtually all commenters support the Commission’s efforts to update its fee assessment methodology to more accurately reflect the subject areas worked on by current Commission FTEs.² Given that such reform is long overdue, ITTA urges the Commission to move forward

¹ See *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2013; Procedures for Assessment and Collection of Regulatory Fees; Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket Nos. 13-140, 12-201, and 08-65, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 13-74, ¶ 11 (rel. May 23, 2013) (“NPRM”).

² See, e.g., Comments of the American Cable Association, AT&T, the Competitive Carriers Association, CTIA – The Wireless Association, EchoStar Corp. and Dish Network L.L.C., and the National Association of Broadcasters, MD Docket Nos. 13-140, 12-201, and 08-65 (filed June 19, 2013).

with this proposal immediately and apply any rate increases or reductions resulting from its updated reallocations during this fiscal year (“FY”).³ As a result of marketplace changes and a corresponding shift in Commission resources, the amount wireline providers overpay in regulatory fees has now grown to at least 18%.⁴ Further delaying necessary adjustments would merely perpetuate the outdated and unjustified distribution of regulatory fees that has existed for many years. There is no reasonable basis to continue forcing the wireline industry to subsidize other regulated industry sectors. Every class of regulatory fee payor – broadcasters included – has long been on notice that the fee regime is overdue to be reformed to reduce the disproportionate burden on wireline carriers.⁵ Indeed, the Commission has been considering a comprehensive update to its FTE analysis that would realign the regulatory fee burden across all industry sectors since 2008.⁶

To the extent the Commission deems it necessary to apply a cap on regulatory fee changes this FY, it should set the cap at a percentage that would provide meaningful change this year, and then proceed with a full transition to new regulatory fees in FY 2014.⁷ More specifically, ITTA proposes that the Commission set any FY 2013 cap at 14% at a minimum, and then fully implement the adjustments to its regulatory fees based on recent FTE data the following year. In light of access line losses of about 9% per year, a benchmark that does not substantially exceed this amount would provide no relief to wireline carriers and their customers

³ See *NPRM* at ¶ 17.

⁴ This percentage was derived by calculating the percentage decrease in regulatory fees ITSPs would experience when the rate per revenue dollar for FY 2012 (0.00375) is adjusted to the more accurate rate of 0.0030577, based on the Commission’s FTE data as of September 30, 2012. See *NPRM* at Attachments F and A2.

⁵ See Comments of the National Association of Broadcasters, MD Docket Nos. 13-140, 12-201, and 08-65 (filed June 19, 2013). Going forward, to ensure that the regulatory fee process continues to reflect the Commission’s actual costs by industry sector, the Commission should continue to update its FTE data on a regular basis (at least biennially) to reflect ongoing marketplace changes.

⁶ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2008*, MD Docket No. 08-65, Report and Order and Notice of Proposed Rulemaking, FCC 08-182 (rel. Aug. 8, 2008). See also “FCC Examines Fees Used to Fund Commission Budget,” News Release (rel. Aug. 1, 2008) (noting that the Commission’s Further Notice of Proposed Rulemaking regarding FY 2008 regulatory fees asks “how to more fairly distribute regulatory fees among communications industry segments” because of “significant changes in the industry since the agency last reviewed its regulatory fee structure” and illustrates the shift in the regulatory fee burden across communications industry sectors).

⁷ Adopting ITTA’s proposal to combine wireless voice providers with other voice services in the interstate telecommunications service provider (“ITSP”) fee category as discussed below would serve to balance out regulatory fee increases resulting from completing the transition based on updated FTE data.

because the costs are imposed on a shrinking base.⁸ There is no valid basis to maintain a regulatory regime that lacks any relationship to current marketplace realities.

The Commission also should adopt ITTA's proposal to combine wireless voice services into the ITSP category with wireline and interconnected VoIP services so that all voice providers are treated in a similar, straightforward manner.⁹ Wireless services are comparable to wireline services in many ways and encompass similar regulatory policies and programs, such as universal service, intercarrier compensation, number portability, 911 emergency access, special access, rate integration, customer proprietary network information, pole attachments, and CALEA.¹⁰ It is irrelevant that wireless carriers contribute to the Commission's budget through the purchase of wireless spectrum.¹¹ Acquiring spectrum license rights through the auction process is part of the cost of developing a wireless network. Wireline providers have invested billions of dollars in building network infrastructure to provide communications services to consumers; that is their cost of doing business. The fact that wireless carriers use spectrum in connection with operating their networks does not justify treating them differently from other network operators for regulatory fees purposes. As with all other industry sectors, the regulatory fees paid by wireless providers should reflect the costs the Commission incurs in regulating such entities.

It also is immaterial that wireless and wireline providers are regulated by separate bureaus.¹² It is sufficient that a significant core of major issues handled by the bureaus affect both wireline and wireless providers. Furthermore, that argument is particularly disingenuous when one considers that interconnected VoIP service providers regulated by the Media Bureau pay regulatory fees as ITSPs. Many of the policies leading the Commission to conclude that interconnected VoIP services should be included in the ITSP fee category are applicable with respect to wireless voice services. For instance, both interconnected VoIP and wireless voice services are "increasingly used to replace traditional telephone service," and both types of services "continue[] to grow and to attract customers who previously relied on traditional voice service."¹³ As with interconnected VoIP services, wireless services are "almost indistinguishable, from the consumers' point of view, from the service offered by interstate telecommunications service providers."¹⁴

⁸ See *Local Telephone Competition: Status as of June 30, 2012*, Wireline Competition Bureau, Industry Analysis and Technology Division (rel. June 13, 2013), at 2.

⁹ See *NPRM* at ¶¶ 11-12.

¹⁰ See *id.* at ¶ 12.

¹¹ See, e.g., CTIA Comments at 2-6.

¹² See AT&T Comments at 3.

¹³ *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, MD Docket No. 07-81, FCC 07-140, ¶ 12 (rel. Aug. 6, 2007).

¹⁴ *Id.* at ¶ 18.

In combining interconnected VoIP providers with wireline providers in the ITSP category, the Commission recognized “that the costs and benefits associated with our regulation of interconnected VoIP providers are not identical as those associated with regulating interstate telecommunications service.”¹⁵ However, “regulatory fee assessments are based on the burden imposed on the Commission, not benefits realized by regulatees.”¹⁶ Given that interconnected VoIP providers create costs for the Commission by participating in rulemaking proceedings, waiver petitions, and other matters based on Commission rules requiring such providers to contribute to the Universal Service Fund, provide 911 emergency access, and comply with CPNI and other requirements applicable to voice services, the Commission concluded that “this category of service providers should share in the costs of the Commission’s regulatory activities in the same manner as ITSPs.”¹⁷ The same logic should compel the Commission to combine wireless providers with other voice services in the ITSP category. Doing so would promote the Commission’s goals of “ensuring regulatory parity among providers of similar services” in a manner that “will minimize marketplace distortions arising from regulatory advantage.”¹⁸

Nowhere is it more evident that wireless carriers have received a windfall as a result of their differential treatment for regulatory fee purposes than in a side-by-side comparison of the regulatory fees paid by the wireline and wireless industries. Wireless voice providers pay only about \$0.17 per handset in regulatory fees. In contrast, the regulatory fees per subscriber paid by ITTA member companies are as much as *six times* as high, and that anti-competitive disparity continues to grow with ongoing access line loss and wireless substitution.¹⁹

Thus, ITTA fully supports the Commission’s implementation of this proposal through adoption of a “permitted amendment” that would take effect in FY 2014.²⁰ When the

¹⁵ *Id.* at ¶ 19.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Telephone Number Requirements for IP-Enabled Service Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis; Numbering Resource Optimization*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket Nos. 96-115, 99-200, FCC 07-188, 22 FCC Rcd 19531, ¶ 1 (2007).

¹⁹ See Comments of the Independent Telephone & Telecommunications Alliance, MD Docket Nos. 13-140, 12-201, and 08-65 (filed June 19, 2013), at 8 (providing examples of the astronomical and ever-increasing regulatory fees paid by ITTA member companies, as follows. CenturyLink: \$0.41/access line in 2011-12; \$0.43 in 2012-13; and \$0.45 in 2013-14. Frontier: \$0.35/access line in 2011-12; \$0.37 in 2012-13; and \$0.41 in 2013-14. HickoryTech: \$0.75/access line in 2009-10; \$0.83 in 2010-11; \$0.92 in 2011-12; and \$1.01 in 2012-13).

²⁰ See *NPRM* at ¶ 13.

Commission added interconnected VoIP providers to its regulatory fee assessments, it made this change pursuant to a “permitted amendment,” as authorized by section 9(b)(3) of the Act.²¹ Combining wireless voice providers into the ITSP category also would qualify as a “permitted amendment,” and that approach is particularly appropriate here given that the Commission is merely modifying the wireless voice provider category rather than imposing a new fee on this class of providers.

In sum, the Commission should move forward both with the proposal to update its fee assessment methodology to more accurately reflect the subject areas worked on by current Commission FTEs and ITTA’s proposal to assess all voice providers on the same basis by treating wireless voice providers as ITSPs for regulatory fees purposes. These actions would ensure that regulatory fees are allocated in an equitable and competitively neutral manner in furtherance of the Commission’s statutory mandate to make certain that fees levied on regulated entities are adjusted to account for “factors that are reasonably related to the benefits provided to the payor of the fee.”²² Moreover, adopting these reforms would promote the Commission’s goals of achieving “fair, sustainable, and predictable results” and would correct the longstanding disparity in regulatory fee obligations between wireline and wireless voice providers, reducing the increasingly unfair burdens such regulatory costs impose on wireline carriers and their customers.²³

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,



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Vice President, Regulatory Affairs

cc: Mika Savir
Thomas Buckley
Roland Helvajian
Megan Hartnett

²¹ 47 U.S.C. § 159(b)(3).

²² 47 U.S.C. § 159(b)(1)(A).

²³ *NPRM* at ¶ 14.